THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21073 OF 2006

DATED 16th OCTOBER, 2006

BETWEEN

V.Adeppa

… Petitioner

and

The Secretary, Government of Andhra Pradesh, Industries & Commerce (M-III) Department, Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21073 OF 2006

ORDER:

The petitioner made an application to the first respondent through proper channel for grant of mining lease for quartzite for an extent of about Acs.600.00 in survey No.217 of Kundankota village of Yadiki Mandal in Anantapur District. The application was recommended by the second respondent. The first respondent granted mining lease by their orders in G.O.Ms.No.248, dated 12.09.2006, subject to the provisions of Mines and Minerals (Development & Regulation) Act, 1957 (the Act, for brevity); the Mineral Concession Rules, 1960 (the Rules) and subject to the conditions in the lease agreement in Form K appended to the Rules as well as additional conditions appended to the said order. The petitioner alleges that in pursuance of the grant of lease, the first respondent also approved the mining plan as required under Rule 22(4) of the Rules, which is valid for the entire duration of twenty years period and subject to such modifications that may be made by the first respondent. When the petitioner was taking steps to complete other formalities for commencing mining operations, the Government issued G.O.Ms.No.270, dated 27.09.2006 according permission to the third respondent to lay the 'belt surveyor' with structure passing through the mining area granted to the petitioner. The said G.O., was issued in partial modification of the orders in G.O.Ms.No.248, dated 12.09.2006, by which mining lease was granted to the petitioner. Feeling aggrieved by G.O.Ms.No.270, the petitioner filed instant writ petition seeking its invalidation.

At the stage of Admission itself, the third respondent has filed counter affidavit. The writ petition is opposed on the ground that the petitioner has no enforceable right to invoke public law remedy under Article 226 of Constitution of India. It is also alleged that the application (along with mining plan) of the third respondent for mining lease for limestone over an extent of Acs.970.17 cents in survey Nos.57, 58, 60 to 67 etc., of Gudipadu village and survey Nos.1 to 10 etc., of Kundankota village for a period of twenty years, has been

forwarded by the State Government to the Central Government under Section 6 of the Act as the area exceeds 10 square kilometers. So as to transport the mineral from the crusher in survey No.216 of Kundankota village, through various survey numbers in the said village, the 'conveyor belt' is proposed to carry mineral to the factory site as it is not possible to lay a road to transport limestone for the cement factory. The proposed 'belt conveyor' would traverse the land in survey Nos.216, 217, 223, 225, 227 and 254 of Kundankota village. The allegation that the first respondent deleted entire extent of Acs.28.40 cents in survey No.217 alone is baseless as the impugned G.O., refers to other survey numbers by describing them as survey No.217 etc. The grant of lease to the petitioner has not been crystalised as no lease deed is executed by the first respondent in favour of the petitioner. The laying of the proposed 'belt conveyor' would not be detrimental to the petitioner as the same would occupy very small extent as against total extent of Acs.595.43 cents, which would yield quartzite for a period of 657 years. The first respondent issued impugned order duly considering all aspects of the matter and following principles of natural justice. There is no other suitable area for laying 'belt conveyor' and if the third respondent is not allowed to do so, it would be incapacitated from transporting crushed mineral. The writ petition is not *bona fide.*

Learned counsel for the petitioner contends that whether or not the petitioner executed lease deed in Form K, he has a right against arbitrary reduction of mining area, which is granted to him validly by G.O.Ms.No.248, dated 12.09.2006. Therefore, the respondents 1 and 2 ought to have conducted enquiry, after giving notice to the petitioner and they ought to have shown the place or places through which the 'belt conveyor' would pass so that there would not be any detriment or loss to the petitioner by reason of such 'belt conveyor' obstructing trial mining areas undertaken by the petitioner. He would urge that when once mining plan is approved under Rule 22(4) of the Rules, the same cannot be altered or modified without notice to the mining lessee. Lastly, he would urge that the third respondent is even granted mining lease for limestone but the third respondent is going ahead with the construction of 'belt conveyor', which itself is illegal and contrary to the Rules. **Per contra,** the learned senior counsel for third respondent and the learned Assistant Government Pleader for Industries for respondents 1 and 2, submit that petitioner has no right to file the present writ petition. Secondly, they would urge that the inchoate right of the petitioner, by reason of grant of mining lease for quartzite, is no more violated as respondents 1 and 2 have followed due process of law before issuing the impugned order. The learned counsel point out

that though mining lease was granted in favour of the petitioner for quartzite even before the petitioner could execute the lease deed in Form K, the Government issued impugned orders modifying earlier Government Order, and therefore, the petitioner gets the lease for quartzite excluding the area over which the third respondent proposed to lay 'belt conveyor'.

On considering the application made by the petitioner for grant of mining lease for quartzite over an extent of Acs.595.43 cents in survey No.217 of Kundankota village, the Government made it clear that the grant of lease would be subject to
(i) obtaining the consent for establishment from A.P.Pollution Control Board and (ii) obtaining Environmental Clearance from Government of India under Environmental Impact Assessment as per S.O.No.60 (E), dated 27.01.1994, the lease is also subject to the provisions of the Act and the Rules; and (iii) subject to the conditions in Form K prescribed under the Rules. It is not denied that in the series of formalities to be completed, the petitioner only completed the formality of getting the mining plan under Rule 22(4) of the Rules approved by the competent authority. The lease deed in Form K has not been executed. This is presumably due to non-receipt of approvals by A.P.Pollution Control Board and Environmental Clearance from the Government of India. Therefore, as rightly pointed out by the learned senior counsel for third respondent, the petitioner cannot be said to have any crystallized right that can be enforced under Article 226 of Constitution of India. It is no doubt true by reason of the land in G.O.Ms.No.248, the petitioner has inchoate right, which can only become enforceable after he completes other formalities. At that stage, the Government issued impugned Government Order modifying the grant given to the petitioner to the effect that the third respondent is permitted to lay 'belt conveyor' in survey No.217 to an extent of Acs.28.40 cents. Does it in any way violate the inchoate right? In the considered opinion of this Court, there cannot be such violation of any right, interest or title that was granted to the petitioner for mining lease for quartzite.

Even if the petitioner is assumed to have executed Form K agreement, under the covenants of Mining Lease in Parts II and IV, liberties, powers and privileges to be exercised and enjoyed by the mining lessee are subject to restrictions and conditions in Part III and liberties, powers and privileges are reserved to the State Government. Every mining lessee is bound by these conditions to secure the encumbrances attached to the land leased out like access for ingress and engress mining. Under no law, a mining lessee can claim additional right or rights over the land or other minerals for which lease is not granted. Therefore, the petitioner cannot have any grievance.

Whether the petitioner's right was violated by non-observance of principles of natural justice? The record shows the following chronology of events. Initially, the petitioner herein made an application for grant of mining lease for Silica sand (quartzite) over an extent of about Acs.600.00 cents in survey No.217 of Kundankota village. By that time, another application made by one Sri V.Ramakrishna on 16.06.2001, for some mining lease was pending. The Government issued Memo No.1016/M.III-1/2006-1, dated 28.02.2006, rejecting the mining lease application of Sri V.Ramakrishna treating the same as withdrawn and also proposed to grant mining lease to the petitioner. He was asked to submit mining plan approved by the second respondent. The petitioner then made an application on 16.06.2006 along with draft mining plan to the second respondent. The said mining application was approved by the Joint Director in the office of the second respondent on 17.07.2006. The life of the quartzite reserve at the rate of annual production of 23,320 metric tonnes is 657 years and the mining lessee can recover 1,53,13,126 metric tones of quartzite. While calculating the life of the reserves as well as quantity of mineral, the second respondent also took the possible loss involved in handling the operations of open cost manual mining method.

After the mining plan is submitted by the second respondent along with recommendation vide letter dated 21.07.2006, the Government issued the order granting lease in favour of the petitioner. Even before the Government issued orders in favour of the petitioner, considering the application made by the third respondent for grant of mining lease for limestone in Gudipadu and Kundankota villages, the first respondent advised the third respondent vide Memo No.7879/M.III(1)/06, dated 08.08.2006 to submit mining plan as contemplated under Rule 22(4) of the Rules. Apart from this, the third respondent approached the first respondent on 07.09.2006 and 11.09.2006 requesting the first respondent to permit them to lay 'belt conveyor' with structures having 100 meters width corridor covering length of 1150 meters all along the mining lease area in survey No.217 (sanctioned to petitioner), for transportation of limestone. The Government asked for a report from the second respondent, who submitted a report vide letter DMG F.No.17531/R4-1/06, dated 20.09.2006, justifying the grant of permission for laying 'belt conveyor' by the third respondent. While doing so, the second respondent took consideration the mining plan and came to the conclusion that the loss that might be caused to the petitioner would be negligible as the area proposed to be occupied by the belt conveyor is only Acs.28.40 cents out of the total mining lease area of Acs.595.43 cents. Based on the

said report of the second respondent, the impugned Government Order was issued.

The brief chronology as above would show that the application of the petitioner for grant of mining lease and the application of the third respondent for permission to lay 'belt conveyor', were processed almost simultaneously. The first respondent keeping in view the conditions in Part II and Part IV of the lease agreement in Form K as well as Rule 31 of the Rules, exercise their discretion and modified the orders issued earlier in favour of the petitioner. It is also on record and indeed the petitioner also admits that having come to know that the third respondent sought permission to lay a 'belt conveyor' over the land in survey No.217, the petitioner made representation on 23.09.2006 requesting respondents 1 and 2 to direct the concerned authority to stop construction activities undertaken by the third respondent. This application was also considered by the first respondent as is seen from the impugned order. When the representation ventilating the grievance of a person was also considered and decision making authority comes to conclusion that the grievance made out is not justified, the person who suffers from the decision cannot be permitted to take the plea that he was not given notice before taking the decision. As rightly pointed out by the respondents, even as on today, the mining lease granted by the first respondent in favour of the petitioner has not been crystalised into an enforceable right and therefore, no prejudice much less substantial prejudice is caused to the petitioner. Therefore, the submission of violation of principles of natural justice is devoid of any merit. The contention of the petitioner that the third respondent commenced construction even before the Government granted permission is categorically denied in the counter affidavit, and therefore, such allegation does not advance the case of the petitioner.

The petitioner has no enforceable right and therefore, the writ petition is dismissed. No costs.

_____

(V.V.S.RAO,J)

16.10.2006.
pln